

REMARKS

Claims 1-12 are currently pending in the application. The status of the claims based on this reply is as follows:

Claims 1, 4, and 5 have been amended;

Claims 13-15 have been added; and

Claims 9-12 have been withdrawn.

Claims 1-8 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Kawajiri, et al. (US Patent No. 4,948,015).

Independent claim 1 is directed to a fitment that is suitable for use with aseptic containers. In this regard, the claimed fitment employs a barrier foil comprised of an aluminium foil that is coated on both sides with a plastic material but presents an exposed aluminum edge immediately prior to assembly. It is undesirable to have the exposed edge come into contact with the contents of a container to which the fitment is attached. The claimed fitment is designed to prevent such contact from occurring. The fitment is comprised of: (a) a base flange, (b) a hollow spout, (c) a removable part within a base of the spout, (d) an overcap for resealably closing the spout, and (e) a barrier foil comprising an aluminium foil coated on both sides with a plastics layer. As noted, the barrier foil presents an exposed aluminium cut edge immediately prior to assembly. To prevent the aluminium cut edge from coming into contact with the contents of a container with which the fitment is subsequently associated, the barrier foil with the exposed aluminium cut edge is assembled to the base flange such that the aluminium cut edge is covered by a portion of the base flange.

The '015 patent is directed to a carton with a liquid pouring-out device. The liquid pouring out device 13 comprises a flange 20, a spout 13a, a partition wall 15, a cap 13b, and a thin film 21 that serves as a gas barrier. The thin film 21 includes a barrier layer 22 as an innermost layer. Further, the thin film 21 is a laminated structure comprising a first polyethylene layer, an aluminum layer, and a second polyethylene layer. The aluminum layer is the innermost barrier layer 22. The barrier layer 22 has its peripheral edge concealed by the material of the film 21 to prevent corrosion of the barrier layer by acids. Consequently, the thin film 21 is comprised of an aluminum barrier layer 22 that is entirely surrounded by polyethylene or some

other material. The thin film 21 with its completely coated aluminum barrier layer is attached to the partition wall 15 by, for example, insert molding. See col. 4, lines 47-59, and Fig. 4. Consequently, immediately prior to attachment of the thin film 21 to the partition wall 15, the aluminum barrier layer 22 of the thin film is completely surrounded by polyethylene of other suitable material and does not present an aluminum edge that could come into contact with the contents of the container with which the device 13 is subsequently associated. In contrast, the invention of claim 1 requires a barrier foil comprised of an aluminum foil coated on both sides with a plastic material and that, immediately prior to being attached to the flange, presents an exposed aluminum cut edge. Further, the suggested insert molding of the thin film 21 of the '015 patent is almost inevitably likely to result in a crevice between the edge of the film and the flange 20. Assuming, for the sake of argument, that this is the case, then the thin film 21 relies on the coating that completely surrounds the aluminum barrier layer 22 to prevent contact between the aluminum barrier layer and the contents of the container and not on any portion of the flange 20 to do so. That the thin film 21 relies on the coating that surrounds the aluminum barrier layer 22 and not on a portion of the flange 20 to prevent contact between the aluminum barrier layer and the contents of a container is further emphasized by the second embodiment of a liquid pouring device 100 shown in Fig. 6-8 of the '015 patent. In this embodiment, the film 21 has a barrier layer 22 that is surrounded by a coating and that is applied to a flat surface of flange 110. Since no portion of the flange 110 covers the edge of the film 21, the coating surrounding the barrier layer 22 is being relied upon to prevent contact between the barrier layer and the contents of a container. See Figs. 6 and 7B. Similarly, the embodiment of the pouring device illustrated in Figs. 9 and 10 of the '015 patent has a film 21 with a barrier layer 22 that is surround by a coating which is relied upon to prevent the undesired contact.

The '015 patent does not teach or suggest a barrier foil that, immediately prior to assembly to a base flange, presents an exposed aluminum cut edge. Moreover, the '015 patent does not teach or suggest such a barrier foil that, when assembled to a base flange, is covered by a portion of the base flange to prevent the aluminum cut edge from coming into contact with the contents of a container. A barrier foil as set forth in the claim 1 is also not taught or suggest by the '015 patent in conjunction with any combination of the other elements of claim 1. Based on

the foregoing, it is respectfully asserted that independent claim 1 is in condition for allowance, and such an allowance is earnestly solicited.

Independent claim 4 is directed to a fitment that employs a barrier foil comprised of an aluminium foil that is coated on both sides with a plastic material but presents an exposed aluminum edge that needs to be prevented from coming into contact with the contents of a container to which the fitment is ultimately connected. The fitment comprises: (a) a base flange having a first flange surface, a second flange surface that is opposite to the first flange surface, and an flange edge extending between the first and second flange surfaces, (b) a hollow spout projecting from the second flange surface; (c) a removable part within a base of the spout, (d) an overcap for resealably closing the spout, and (e) a barrier foil. The barrier foil comprises: (i) a foil with a first foil side, a second foil side that is opposite to the first foil side, and a foil edge extending between the first and second foil sides, (ii) a first plastics layer extending over the first foil side, and (iii) a second plastics layer extending over the second foil side. The barrier foil is wrapped over the first surface of the flange such that the barrier foil extends over the first flange surface and the flange edge, and extends over at least a portion of the second flange surface – the surface from which the spout projects.

The thin foil 21 in each of the embodiments of the pouring-out device disclosed in the '015 patent is planar. See, e.g., Figs. 1, 5, 7B, and 8. In contrast, the invention of claim 4 specifies a barrier foil that extends over a first flange surface, over a flange edge, and partially over a second flange surface that is opposite to the first flange surface. The '015 patent does not teach or suggest any such barrier foil. Moreover, the '015 patent does not teach or suggest any such barrier foil in conjunction with any combination of the other elements of claim 4. Based on the foregoing, it is respectfully asserted that independent claim 4 is in condition for allowance and requested that such an allowance be granted.

Each of claims 2, 3, 5, 6, 7, and 8 is a dependent claim that depends either directly or indirectly from one of independent claims 1 or 4. Consequently, each of these dependent claims is at least allowable for the reasons noted with respect to the independent claim from which it depends. However, each of these dependent claims may be allowable for additional reasons, and the applicant reserves the right to assert any such reason in the future.

No claim related fees are believed to be due with this response. In the event any such fees are due, please debit Deposit Account 08-2623.

In the event that a petition for extension of time under 37 CFR §1.136(a) is required to have this reply considered and such a petition does not otherwise accompany this reply, please consider this a petition for an extension of time for the required number of months and authorization to debit Deposit Account 08-2623 for the required fee.

The application now appearing to be in form for allowance, reconsideration and allowance thereof is respectfully requested. If a telephone conversation will further the prosecution and/or expedite allowance, the examiner is invited to contact the undersigned attorney.

Respectfully submitted,

HOLLAND & HART LLP

By: 

Christopher J. Kulish, Esq.
Registration No. 33,056
P.O. Box 8749
Denver, Colorado 80201-8749
(303) 473-2700, x2731

Date: November 6, 2008

3918656_1.DOC